



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/153535

PRELIMINARY RECITALS

Pursuant to a petition filed November 18, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 06, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,185 from the Petitioner for the period of December 1, 2012 – April 30, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Belinda Bridges

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 25, 2012, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. She reported that her household composition was herself and her 15 year old son. She

reported her employment at [REDACTED] and reported that she works 28.75 hours/week at \$12.67/hour. She also reported monthly child support income of \$245. Petitioner submitted a pay statement but it was not a statement from the previous 30 days. The agency processed the case on October 2, 2012 and continued the Petitioner's FS benefits.

3. On October 4, 2012, the agency requested recent pay statements from the Petitioner again. On October 9, 2012, the agency updated the Petitioner's case with pay statements dated September 7, 2012, and September 21, 2012.
4. On October 10, 2012, the agency issued a Notice of Decision to the Petitioner informing her that effective November 1, 2012, she would receive \$237/month in FS benefits based on gross monthly income of \$1,143.94. The notice also informed the Petitioner of the requirement to report to the agency if her income exceeded \$1,260.83 by the 10th day of the next month.
5. On October 25, 2013, the agency received an employer verification of wages for the Petitioner for the period of July 26, 2013 – October 18, 2013. The verification shows that on October 4, 2013, Petitioner received gross pay of \$772.41. On October 18, 2013, Petitioner received gross pay of 769.20. In addition, Petitioner received \$245 in October, 2013 for child support. Total gross income for October, 2013 was \$1786.61. Petitioner did not report her October income to the agency by November 10, 2013.
6. In February, 2013, Petitioner's hourly wage rate increased from \$12.67/hour to \$12.82/hour.
7. On November 13, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency intends to recoup an overissuance of FS benefits in the amount of \$1,185 for the period of December 1, 2012 – April 30, 2013.
8. On November 18, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012).

In this case, the agency became aware of a potential for an overissuance in April, 2013. The agency alleges the overpayment is due to client error in not reporting income that exceeds the reporting requirement. Here, the alleged overpayment sought by the agency occurred five months prior to discovery so either recovery method is appropriate under the law.

In a fair hearing concerning the correctness of an overpayment of benefits, including the Food Share program, the burden of proof is on the agency. The agency must demonstrate a prima facie case establishing by the preponderance of the evidence that the overpayment occurred as determined, and must be recovered.

The agency produced the Petitioner's state wage record and employer verification of wages to demonstrate that the Petitioner received more than \$1,260.83 in gross income in October, 2012 and was,

therefore, required to report her income by November 10, 2012. Her report would have affected benefits beginning in December, 2012 and therefore the agency started the overpayment period in December, 2012. The agency received verification of the Petitioner's wages through October 30, 2012 from the Petitioner's employer. The agency did not have actual wages for the period of December, 2012 – April 30, 2013. In calculating the overpayment, the agency used the state wage record to average monthly income for the 4th quarter of 2012, 1st quarter of 2013 and 2nd quarter of 2013.

At the hearing, the Petitioner produced copies of wage statements. She produced two wage statements for December, 2012. However, both wage statements are for the pay period ending December 8, 2012. There was no wage statement produced for the remainder of December, 2012. The Petitioner produced wage statements that appear to cover the remainder of overpayment period from January 1, 2013 – April 30, 2013. Based on these wage statements and the monthly child support the Petitioner received, the Petitioner was clearly over the income limit for February, March and April, 2013. Specifically, the wage statements show that the Petitioner's gross earned income was as follows:

January, 2013	\$1,333.02
February, 2013	\$1,658.60
March, 2013	\$2,445.80
April, 2013	\$1,538.40

The gross income limit for Petitioner's household was \$1,640. With the \$245/month added to the Petitioner's gross income, she is clearly over the gross income limit for February, March and April, 2013. Petitioner did not supply sufficient information to determine actual wages for December, 2012 so the agency's use of the state wage record monthly average of \$1,807.44 for the 4th quarter is the best evidence. Petitioner was also over the reporting requirement limit of \$1,260.83 each month.

For January, 2013, the Petitioner's gross household income was \$1,578.02 (\$1,333.02 earned income and \$245 child support income). This is below the gross income limit. The Petitioner is entitled to the standard deduction of \$149. Her adjusted income was \$1,429.02 (\$1,578.02 – 149). She was further entitled to a shelter deduction of \$77.49 (\$350 rent + 442 utility standard x 50% of adjusted income). The Petitioner's net income for January, 2013 was \$1,351.53 (\$1,578.02 – deductions of \$226.49). The net income limit for a household of two was \$1,261 so Petitioner did not meet the net income limit test for benefits in January, 2013.

Based on the evidence submitted, the Petitioner failed to report income over the reporting requirement limit and the Petitioner's actual gross income for the period of December, 2012 – April, 2013 exceeded the gross and net income limits for FS benefits. The agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,185 from the Petitioner for the period of December 1, 2012 – April 30, 2013.

CONCLUSIONS OF LAW

The Petitioner failed to report income over the reporting requirement limit and the Petitioner's actual gross income for the period of December, 2012 – April, 2013 exceeded the gross and net income limits for FS benefits. The agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,185 from the Petitioner for the period of December 1, 2012 – April 30, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 26, 2014.

Milwaukee County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability